

REMARKS

This Amendment is submitted in reply to the non-final Office Action mailed on September 2, 2009. There are no fees due herewith this Amendment. The Commissioner is hereby authorized to charge additional fees that may be required or credit any overpayment to Deposit Account No. 02-1818. If such a withdrawal is made, please indicate the Attorney Docket No. 3712036-00752 on the account statement.

Claims 1-14 are pending in this application. In the Office Action, the specification is objected to. Claims 1-6 are rejected under 35 U.S.C. §112, second paragraph. Claim 7 is rejected under 35 U.S.C. §102(b). Claims 1-3, 6 and 8-14 are rejected under 35 U.S.C. §103(a). In response, Claims 1-2, 5-7 and 9-14 have been amended and Claims 3-4 and 8 have been canceled without prejudice or disclaimer. The amendments do not add new matter. In view of the amendments and/or for the reasons set forth below, Applicants respectfully submit that the rejections should be withdrawn.

Initially, Applicants note that the Patent Office has indicated that Claims 4-5 would be allowable if rewritten or amended to overcome the rejections under 35 U.S.C. §112, second paragraph. In response, the subject matter of Claims 3 and 4 has been added to independent Claim 1 and have been amended to overcome the rejections under 35 U.S.C. §112, second paragraph, as will be discussed below. Further, Claim 5 has been amended to depend from independent Claim 1. Accordingly, Applicants respectfully submit that independent Claim 1 and the dependent claims that depend therefrom are in condition for allowance.

In the Office Action, the specification is objected to for allegedly being "in a European format." The Patent Office suggests inclusion of section headings. See, Office Action, page 2, lines 3-7. In response, Applicants have amended the specification to add such headings. The amendments do not add new matter and are solely for clarification purposes and not to avoid any prior art. For at least the above-mentioned reasons, Applicants respectfully submit that the specification contains proper format.

Accordingly, Applicants respectfully request that the objection to the specification be reconsidered and withdrawn.

In the Office Action, Claims 1-6 is rejected under 35 U.S.C. §112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which

applicant regards as the invention. Specifically, with respect to Claim 1, the Patent Office takes issue with the phrase “[an element] which is rotatably attached to the device” and states that the invention is “the device” itself and it is unclear how one of the invention’s elements may be attached to the device itself. See, Office Action, page 2, lines 20-22. The Patent Office further states that the phrase “and is associated to an external, magnetic member” is vague and unclear in its structural connection. See, Office Action, page 3, lines 1-4. In response, Applicants have amended Claim 1 to recite, in part, a drink-stirring device comprising an outlet tube for conducting at least one liquid jet towards an interior of a drinking vessel, the liquid is supplied through the outlet tube, the outlet tube being rotatably attached to a stirring device and including a magnetic member on an exterior of the outlet tube. The amendments do not add new matter. The amendments are supported in the specification at, for example, page 5, line 27-page 6, line 20; Figures 3-4. Applicants respectfully submit that the claim is no longer in “narrative” form and provides additional structure that clarifies the location of the outlet tube and magnetic member.

Regarding Claim 2, the Patent Office asserts that it is unclear what is meant by “an external magnetic member” and that the claim raises confusion because it states that the magnetic member is a “non-permanent-magnetic iron ring.” See, Office Action, page 3, lines 5-11. In response, Applicants note that Claim 1 was amended to recite, in part, that the magnetic member is located on an exterior of the outlet tube. Thus, Applicants respectfully submit that Claim 2 is no longer confusing.

Further, with respect to Claim 2, the Patent Office states that the phrase “non-permanent magnetic iron ring” appears to suggest that the member is not “magnetic” in the accepted term but merely ferrous (i.e., “magnetizable”) which would accept a magnetic flux. See, Office Action, page 3, lines 7-11. Applicants respectfully disagree. Instead, Applicants respectfully submit that while a non-permanent magnet is capable of becoming temporarily magnetized, this does not mean that such a magnet is not “magnetic.” For example, a *permanent* magnet is an object made from a material that is magnetized and creates its own persistent magnetic field. Materials that can be magnetized, which are also the ones that are strongly attracted to a magnet, are called ferromagnetic (or ferrimagnetic). Permanent magnets are made from magnetically *hard* ferromagnetic materials that stay magnetized. However, some ferromagnetic materials can

be magnetised by a magnetic field but do not tend to remain magnetised when the field is removed; these are termed *soft*. See, Wikipedia, "magnet." Therefore, Applicants respectfully submit that the skilled artisan would immediately appreciate that certain rings made of ferromagnetic material would be capable of not becoming permanently magnetized after having been located in a magnetic field and that some ferromagnetic materials are, in fact, non-permanent magnets.

With respect to Claim 3, the Patent Office states that it is unclear how the physical arrangement of elements in Claims 1 and 3 may cause a sequence of activation since the claim does not positively recite a controller. See, Office Action, page 3, lines 12-15. In response, Applicants have amended Claim 1, which now includes the subject matter of previous Claim 3, to recite, in part, a drink-stirring device comprising an electromagnet arrangement, and the electromagnets being arranged so as to be activated cyclically in turn by electronics on a circuit board, and wherein the electromagnets are enclosed in a housing having a surrounding casing and a bottom plate, and the housing and the bottom plate have upwardly conically tapering necks, which together form a through-passage for the outlet tube. The amendments do not add new matter and are supported in the specification at, for example, page 6, lines 22-32. Applicants respectfully submit that Claim 1 now recites a means for controlling the electromagnetics. For at least the reasons set forth above, Applicants respectfully submit that Claims 1-6 fully comply with the requirements of 35 U.S.C. §112, second paragraph.

Accordingly, Applicants respectfully request that the rejection of Claims 1-6 under 35 U.S.C. §112, second paragraph, be reconsidered and withdrawn.

In the Office Action, Claim 7 is rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 4,649,118 to Anderson ("*Anderson*"). In contrast, Applicants respectfully submit that *Anderson* is deficient with respect to the present claims.

Currently amended independent Claim 7 recites, in part, a method for stirring and eventually foaming a liquid in a vessel, the method including passing the liquid through a liquid delivery outlet tube that is rotatable at a determined speed, providing a magnetic member; and locating an electromagnet arrangement outside the magnetic member to create a magnetic field configured to drive the magnetic member and tube together in rotation. The amendment does not add new matter. The amendment is supported in the specification at, for example, page 6, line

22- page 7, line 36; Figures 3-4. The drink-stirring device of the present disclosure operates by providing a liquid delivery outlet tube that is rotatable so that emerging liquid jets can be given a corresponding centrifugal effect to stir a liquid in a cup located below the delivery outlet tube. The device provides a simple and easy to clean construction that does not contain any moving parts in the liquid duct, has a small overall height and has few moving parts. Such a structure allows for preparation of different kinds of drinks with different requirements for stirring during preparation. The device also provides a more hygienic delivery and more hygienic stirring of the drink with reduced contact of the system with the liquid. See, specification, page 3, line 1-page 4, line 9. In contrast, Applicants respectfully submit that *Anderson* fails to disclose each and every element of the present claims.

Anderson fails to disclose or suggest a method for stirring and eventually foaming a liquid in a vessel, the method including passing the liquid through a liquid delivery outlet tube that is rotatable at a determined speed, providing a magnetic member on an exterior of the outlet tube; and locating an electromagnet arrangement outside the magnetic member to create a magnetic field configured to drive the magnetic member and tube together in rotation as required, in part, by currently amended independent Claim 7. The Patent Office even admits same. See, Office Action, page 5, lines 1-5. Instead, *Anderson* is entirely directed toward a cell culturing system having a unitary filter and a stirring head suspended within a culture vessel by a flexible conduit that permits movement of the head in a predetermined nonrotary path. See, *Anderson*, Abstract. *Anderson* also specifies that a magnet 55 “preferably is press fit in a central bore” of a lower block portion of a cylindrical filter block. See, *Anderson*, column 4, lines 14-19. Accordingly, any liquid that could possibly enter an internal passageway 38 of the tubular member must “flow[] about the magnet 55” as is disclosed in column 6, lines 1-5 of *Anderson*. This is in direct contrast to independent Claim 7, which requires a delivery outlet tube that is rotatable and includes a magnetic member on the exterior of same.

Moreover, anticipation is a factual determination that “requires the presence in a single prior art disclosure of each and every element of a claimed invention.” *Lewmar Marine, Inc. v. Barient, Inc.*, 827 F.2d 744, 747 (Fed. Cir. 1987) (emphasis added). Federal Circuit decisions have repeatedly emphasized the notion that anticipation cannot be found where less than all elements of a claimed invention are set forth in a reference. See, e.g., *Transclean Corp. v.*

Bridgewood Services, Inc., 290 F.3d 1364, 1370 (Fed. Cir. 2002). As such, a reference must clearly disclose each and every limitation of the claimed invention before anticipation may be found. Because *Anderson* fails to disclose each and every element of the present claims, *Anderson* fails to anticipate the present claims.

Therefore, Applicants respectfully submit that *Anderson* fails to disclose or suggest every element of the present claims. Accordingly, Applicants request that the anticipation rejection of Claim 7 under 35 U.S.C. §102(b) be reconsidered and withdrawn.

In the Office Action, Claims 1-3 and 8-14 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Anderson* in view of U.S. Patent No. 5,529,391 to Kindman ("*Kindman*"). For at least the reasons set forth below, Applicants respectfully submit that the cited references are deficient with respect to the present claims.

As noted above, independent Claim 1 and the dependent claims that depend therefrom are now in condition for allowance. Accordingly, Applicants respectfully request that the Patent Office pass Claims 1-2 and 5-6 to allowance.

Currently amended independent Claim 14 has been amended to recite, in part, a device comprising an outlet tube for passing at least one liquid jet towards the interior of a vessel, the outlet tube is rotatably attached to a stirring device and includes a magnetic member on an exterior of the outlet tube. The amendment does not add new matter. The amendment is supported in the specification at, for example, page 6, line 22- page 7, line 36; Figures 3-4. As discussed above, the drink-stirring device of the present disclosure operates by providing a liquid delivery outlet tube that is rotatable so that emerging liquid jets can be given a corresponding centrifugal effect to stir a liquid in a cup located below the delivery outlet tube. The device provides a simple and easy to clean construction that does not contain any moving parts in the liquid duct, has a small overall height, has few moving parts, and allows for preparation of different kinds of drinks with different requirements for stirring during preparation. See, specification, page 3, line 1-page 4, line 9. In contrast, Applicants respectfully submit that the cited references fail to disclose each and every element of the present claims. Additionally, Applicants respectfully submit that the skilled artisan would have no reason to combine the cited references to arrive at the present claims.

For example, *Anderson* and *Kindman* fail to disclose or suggest a device comprising an outlet tube rotatably attached to a stirring device and including a magnetic member on an exterior of the outlet tube as is required, in part, by currently amended independent Claim 14. Instead, as discussed above, *Anderson* is entirely directed toward a cell culturing system having a unitary filter and a stirring head suspended within a culture vessel by a flexible conduit that permits movement of the head in a predetermined nonrotary path. See, *Anderson*, Abstract. *Anderson* specifies that a magnet 55 “preferably is press fit in a central bore” of a lower block portion of a cylindrical filter block. See, *Anderson*, column 4, lines 14-19. Accordingly, any liquid that could possibly enter an internal passageway 38 of the tubular member must “flow[] about the magnet 55” as is disclosed in column 6, lines 1-5 of *Anderson*. This is in direct contrast to independent Claim 14, which requires a delivery outlet tube that is rotatable and includes a magnetic member on the exterior of same.

The Patent Office states that *Anderson* discloses “an outlet tube (38a, 71) which conducts at least one liquid jet.” See, Office Action, page 4, lines 3-5. However, any alleged “outlet tube” of *Anderson* is not rotatably attached to a stirring device, nor does the outlet tube include a magnetic member on an exterior of the outlet tube. Instead, the filter head 55 of *Anderson* follows a drive magnet 64 and, therefore, cannot be rotatably attached to a stirring device if the drive magnet 64 rotates filter head 55. Further, as previously discussed, the magnetic member of *Anderson* is located in a central bore of the filter head, not on an exterior of an outlet tube.

Similarly, *Kindman* is entirely directed to a stirring device such as a microcentrifuge that provides for simultaneous heating/cooling of biological specimens. See, Abstract; column 1, lines 48-58. At no place in the disclosure does *Kindman* even suggest a device comprising an outlet tube rotatably attached to a stirring device and including a magnetic member on an exterior of the outlet tube as is required, in part, by currently amended independent Claim 14. Indeed, the Patent Office merely cites *Kindman* for the disclosure of “an electromagnetic drive arrangement . . . with at least three electromagnets 50 with poles pointed to and spaced about a vessel V.” See, Office Action, page 5, lines 6-8. Therefore, *Kindman* fails to remedy the deficiencies of *Anderson*.

Moreover, the skilled artisan would have no reason to combine *Anderson* (directed to a cell culturing system having a unitary filter) with *Kindman* (directed to a microcentrifuge as a

stirring device) to arrive at the present claims because the cited references are not even in the same field of art. Indeed, the skilled artisan would not look to references in the life sciences field to arrive at a drink-stirring device for beverages such as cappuccino drinks. Accordingly, Applicants respectfully submit that the skilled artisan would have no reason to combine the cited references.

In the Office Action, Claim 6 is rejected under 35 U.S.C. §103(a) as being unpatentable over *Anderson* in view of *Kindman* as applied to Claim 1 above, and further in view of U.S. Patent No. 4,596,779 to Ono ("*Ono*"). Applicants respectfully submit that the patentability of independent Claim 1, as established above, renders moot the obviousness rejection of Claim 6 that depends from independent Claim 1. In this regard, the cited art fails to teach or suggest the elements of Claim 6 in combination with the novel elements of Claim 1. Further, the Patent Office merely relies on *Ono* for the disclosure of a housing which is provided with a gooseneck portion and connected to a lower outlet tube. See, Office Action, page 8, lines 1-4. Accordingly, *Ono* fails to remedy the deficiencies of *Anderson* and *Kindman*.

For the foregoing reasons, Applicants respectfully request reconsideration of the above-identified patent application and earnestly solicit an early allowance of same. In the event there remains any impediment to allowance of the claims that could be clarified in a telephonic interview, the Examiner is respectfully requested to initiate such an interview with the undersigned.

Respectfully submitted,

K&L GATES LLP



BY: _____

Robert M. Barrett
Reg. No. 30,142
Customer No. 29157
Phone No. 312-807-4441

Dated: November 17, 2009